ing the act may be subjected to punishment, and frequently statutes provide a penalty, but the marriage is not affected.[30]

On the whole the principal case accords with the tendency to declare no act good at common law invalid unless the statutory provisions expressly so provide, and is practically in complete harmony with other courts on the questions of age and requirements of form.

D. J. W.

TORTS: LIABILITY OF PARENT OWNING AUTOMOBILE FOR INJURIES RESULTING FROM NEGLIGENT DRIVING BY MINOR CHILD.—In the case of *Watkins v. Clark*,[1] decided by the Supreme Court of Kansas, Nov. 9, 1918, the plaintiff sued the defendant for personal injuries suffered in an automobile accident. The defendant owned the machine, but at the time of the accident it was being driven by his minor daughter. He had purchased the car for the use of his family and had granted general permission to his daughter to use it at any time she pleased. Other members of the family enjoyed the same privilege. On the occasion of the accident she was on a pleasure trip of her own, accompanied by a young lady friend.

The Court upheld the defendant's demurrer to this set of facts, basing its opinion upon the fact that the mere ownership of the car did not render the father liable even when it was operated by his own minor child, unless a relationship of agency was shown.

The question of the father's liability in such cases has raised conflicting decisions in many jurisdictions. Of course it is universally admitted that the mere fact of ownership does not in itself render the father liable. Nor does the mere relationship of parent make him any more liable for this, than for any other tort of his child.[2]

There is also practical unanimity of opinion that the father is liable if the child is acting as his agent in driving the machine.[3] And in accordance with the general principles of agency he is not liable if the child steps out of his position as agent by making a deviation from the father's business for his own pleasure.[4] Similarly the parent is not liable if the child has taken the car against his command.[5]

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[30] Id.

[1] 176 Pac. 131.

[2] Erlick v. Heis (1915) 193 Ala. 669, 69 So. 530.

[3] Morrison v. Clark (1915) 14 Ala. App. 323, 70 So. 200; Daggy v. Miller (1917) (Iowa) 162 N. W. 854; Farnham v. Clifford (1917) (Me.) 101 Atl. 468; Cutts v. Davison (1916) 184 S. W. 921 (Mo. App.).

[4] Jennings v. Okin (1916) 88 N. J. Law 659, 97 Atl. 249; Cohen v. Meador (1916) 119 Va. 429, 89 S. E. 876.

[5] Sultzbach v. Smith (1916) 174 Ia. 704, 156 N. W. 673, L. R. A. 1916F 228; Johnston v. Cornelius (1916) 193 Mich. 115, 159 N. W. 318; Maher v. Benedict (1908) 123 App. Div. 579, 108 N. Y. Supp. 228.

But in cases with facts similar to the principal one there is a decided divergence of opinion. If the car has been purchased for the pleasure of the family and is being used for that purpose at the time of the accident most courts agree in holding the father liable for his minor child's negligence, if at the time he is driving other members of the family.[6] In such cases the minor is manifestly the agent of his father. But if the child has been granted permission to use the machine for his own purposes and at the time of an accident is driving alone, or at least with persons other than members of the family, the father is not liable according to the view of the Kansas Court. Certain other jurisdictions[7] agree in denying liability under such circumstances. However, a contrary view obtains in some states,[8] and is based upon the somewhat attenuated theory that the minor child in amusing himself is acting as agent in behalf of his father. A parent, these courts argue, owes a duty of recreation to his children and when they employ themselves in the pursuit of such recreation they become his agent. Burch, J., in the decision of the principal case, waxes sarcastic over this theory:

"So, if daughter took her friend riding, she might think she was out purely for the pleasure of herself and her friend, but she was mistaken; she was conducting father's 'business' as his 'agent'. . . . . If son took his best girl riding, *prima facie* it was father's little outing by proxy, and if any accident happened, *prima facie,* father was liable."

It is certainly stretching the principles of agency a great deal to say that my minor son is acting as my agent when he amuses himself. Would he be my agent if he batted the baseball I gave him through the neighbor's window? The answer seems clear.

But all the jurisdictions agree that no such doctrine applies if the automobile is not a pleasure car.[9] The minor who takes his father's business car with which to amuse himself is not his agent. And it is also universally agreed that if a parent

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[6] Denison v. McNorton (1916) 228 Fed. 401; Smith v. Jordan (1912) 211 Mass. 269, 97 N. E. 761; McNeal v. McKain (1912) 33 Okla. 449, 126 Pac. 742, 41 L. R. A. (N. S.) 775.

[7] Woods v. Clements (1917) 113 Miss. 720, 74 So. 422; Doran v. Thomsen (1908) 76 N. J. Law 754, 71 Atl. 296, 19 L. R. A. (N. S.) 335, 131 Am. St. Rep. 677; Van Blaricom v. Dodgson (1917) 220 N. Y. 111, 115 N. E. 443; McFarlane v. Winters (1916) 47 Utah 598, 155 Pac. 437.

[8] Lewis v. Steele (1916) 52 Mont. 300, 157 Pac. 575; Davis v. Littlefield (1914) 97 S. C. 171, 81 S. E. 487; Allen v. Bland (1914) (Tex.) 168 S. W. 35; Birch v. Abercrombie (1913) 74 Wash. 486, 133 Pac. 1020.

[9] Parker v. Wilson (1912) 179 Ala. 361, 60 So. 150, 43 L. R. A. (N. S.) 87; Reynolds v. Buck (1905) 127 Iowa 601, 103 N. W. 946.

permits his car to be driven by a minor child who is under the age set by statute for an operator of a car, he is liable.[10]

In California the parent's liability is fixed by statute and no chauffeur's license will be issued to a minor except upon the parent joining in the application, who thereby renders himself jointly and severally liable for any damage occurring by reason of the minor's negligence in operating the car.[11]

Michigan attempted to fix liability upon the owner of a car for all damages resulting from its operations[12] by anyone except a thief, but the Supreme Court of Michigan declared the act unconstitutional in that it made even the most careful owner liable for the negligence of a wilful trespasser who did not intend actually to steal the automobile.[13] Had the statute been more carefully framed, there seems no reason to doubt that it would have been upheld.

In the early days of the automobile it was held to be a dangerous agency[14] and liability attached to the parent upon that doctrine, but this view has been abandoned and everywhere now an automobile is held not to be a dangerous instrumentality.[15] Though of course if the parent allow an incompetent child to operate the machine, in such hands it becomes a dangerous agency and liability results.[16] And similarly if the machine be seriously out of order.[17]

The increasing use of the automobile and consequent frequency of accidents make almost imperative some kind of legislative protection for the pedestrian who is injured by the negligence

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[10] Walker v. Klopp (1916) 99 Neb. 794, 157 N. W. 962, L. R. A. 1916E 1292; Taylor v. Stewart (1916) 172 N. C. 203, 90 S. E. 134.

[11] Cal. Stats., 1917, § 24, Ch. 218.

[12] Subd. 3, § 10, Act 318 of Public Acts of 1909 (Mich.).

[13] Daugherty v. Thomas (1913) 174 Mich. 371, 140 N. W. 615, 45 L. R. A. (N. S.) 699.

[14] Ingraham v. Stockamore (1909) 63 Misc. 114, 118 N. Y. Supp. 399. Cf. opinion of McFarland, J., In Re Berry (1905) 147 Cal. 523, 82 Pac. 44.

[15] Fielder v. Davison (1913) 139 Ga. 509, 77 S. E. 618; Premier Motor Mfg. Co. v. Tilford (1916) 111 N. E. 645, 61 Ind. App. 164; Newbrand v. Kraft (1915) 169 Iowa 444, 151 N. W. 455, L. R. A. 1915D 691; Tyler v. Stephan (1915) 163 Ky. 770, 174 S. W. 790; Linville v. Nissen (1913) 162 N. C. 95, 77 S. E. 1096; Cunningham v. Castle (1908) 127 App. Div. 580, 111 N. Y. Supp. 1057; Danforth v. Fisher (1908) 75 N. H. 111, 71 Atl. 535, 21 L. R. A. (N. S.) 93, 139 Am. St. Rep. 670; Hartley v. Miller (1911) 165 Mich. 115, 130 N. W. 336, 33 L. R. A. (N. S.) 81; Birch v. Abercrombie, supra, n. 8; Steffen v. McNaughton (1910) 142 Wis. 49, 124 N. W. 1016, 26 L. R. A. (N. S.) 382, 19 Ann. Cas. 1227.

[16] Parker v. Wilson (1912) 179 Ala. 361, 60 So. 150, 43 L. R. A. (N. S.) 87; Allen v. Bland (1914) (Tex. Civ. App.) 168 S. W. 35.

[17] Texas Co. v. Veloz (1913) (Tex. Civ. App.) 162 S. W. 377.

of youthful and irresponsible drivers. The California Statute,[18] in this respect, presents a good example.

C. J. S.

WATERS: CONVEYANCE OF RIPARIAN RIGHTS TO NON RIPARIAN OWNER.—An important decision, which settles, for California at least, what has long been a mooted question as to riparian rights, has just appeared in the case of Miller & Lux Incorporated v. J. G. James Company et al.[1] An upper owner carved out of a riparian tract a parcel of land not abutting on the stream and granted it with the stipulation in the conveyance that the grantee should enjoy the same privileges as to the riparian use of the water as if the ownership of the land had continued in the grantor as part of the original riparian tract. The court held that such grantee might, under the common law of riparian rights, enjoy the reserved riparian right even as against a lower riparian owner not a party to the transaction. Text witers had expessed the opinion that the reverse would be held.[2] Mr. Chandler of the California Water Commission voiced the hope[3] that such land might be held to be non-riparian in accord with the view set forth in Wiel on Water Rights in the Western States.[4]

It has long been settled that access to the stream is necessary for the enjoyment of the so-called riparian right or privilege.[5] The right arises from the fact that the land has natural access to the stream. At first the riparian right was regarded as an "incident" to the ownership of the land and was so termed by Justice Story in Tyler v. Wilkinson[6] and by Chancellor Kent in commenting on that case.[7] According to the late Professor Hohfeld's classification[8] it might be termed a "privilege", but it has latterly been described in repeated decisions as a right identified with the realty and is said to be "part and parcel of the land."[9] Where the land has natural access to the stream

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[18] Supra, n. 11.

[1] (Feb. 8, 1919) 57 Cal. Dec. 166.

[2] Wiel, Water Rights in the Western States (3d ed.) pp. 900-11; Wiel, Origin and Comparative development of the Law of Watercourses in the Common Law and in the Civil Law, 6 California Law Review, 357; Chandler, Elements of Western Water Law (Rev. ed.) p. 21.

[3] Supra, n. 2.

[4] Id.

[5] Gould on Waters, p. 297; Farnham on Waters, § 463; Mason v. Hill (1835) 5 Barn. & Adol. 1, 110 Eng. Rep. R. 602; Stockport Waterworks Co. v. Potter (1864) 3 H. & C. 300, 159 Eng. Rep. R. 545; Webb v. Portland Mfg. Co. (1838) 3 Sumn. 189, Fed. Cas., No. 17, 322; Lux v. Haggin (1886) 69 Cal. 255, 10 Pac. 674.

[6] (1827) 4 Mason 397, Fed. Cas., No. 14,312.

[7] 3 Kent's Comm. (14th ed.) p. 439; Wiel, Water Rights in the Western States (3d ed.) p. 771.

[8] Some Fundamental Legal Conceptions as Applied in Judicial Reasoning, 23 Yale Law Journal, 16, 55.

[9] Lux v. Haggin, supra, n. 5; Duckworth v. Watsonville etc. Co. (1907) 150 Cal. 520, 89 Pac. 338; Miller v. Madera Canal etc. Co. (1909) 155 Cal. 59, 99 Pac. 502; Miller & Lux v. Enterprise Co. (1915) 169 Cal. 415,